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## Idaho v. Simmons Respondent's Brief Dckt. 42796

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 42796
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2013-12168
	)	
QUINN GARNER SIMMONS,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Simmons failed to establish that the district court abused its discretion, either by imposing a unified sentence of 10 years, with three years fixed, upon his guilty plea to aggravated battery, or by relinquishing jurisdiction, or by denying his Rule 35 motion for a reduction of sentence?

Simmons Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Simmons pled guilty to aggravated battery and the district court imposed a unified sentence of 10 years, with three years fixed, and retained jurisdiction. (R., pp.105-09.) Following the period of retained jurisdiction, the district court relinquished

jurisdiction. (R., pp.115-18.) Simmons filed a timely notice of appeal. (R., pp.121-23.) He also filed a timely Rule 35 motion for a reduction of sentence, which the district court denied. (Motion for Reduction of Sentence Pursuant to I.C.R. 35; Memorandum Decision and Order Re: Defendant's Rule 35 Motion (Augmentations).)

Simmons asserts his sentence is excessive in light of his community support, status as a first-time felon, employment history, acceptance of responsibility, and purported remorse. (Appellant's brief, pp.4-9.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

The maximum prison sentence for aggravated battery is 15 years. I.C. § 18-908. The district court imposed a unified sentence of 10 years, with three years fixed, which

falls well within the statutory guidelines. (R., pp.105-09.) At sentencing, the state addressed the egregiousness of the offense, the harm done to the victims, the presentence investigator's recommendation for incarceration, and the danger Simmons presents to the community. (6/25/14 Tr., p.36, L.21 – p.40, L.11 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Simmons' sentence. (6/25/14 Tr., p.58, L.14 – p.64, L.5 (Appendix B).) The state submits that Simmons has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Simmons next asserts that the district court abused its discretion by relinquishing jurisdiction, in light of his performance in the rider program and NICI's recommendation for probation. (Appellant's brief, pp.9-11.) Simmons has failed to establish an abuse of discretion.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

“While a recommendation from corrections officials who supervised the defendant [during the period of retained jurisdiction] may influence a court's decision, it is purely advisory and is in no way binding upon the court.” State v. Hurst, 151 Idaho 430, 438, 258 P.3d 950, 958 (Ct. App. 2011) (citing State v. Merwin, 131 Idaho 642, 648, 962 P.2d 1026, 1032 (1998); State v. Landreth, 118 Idaho 613, 615, 798 P.2d 458, 460 (Ct.App.1990)). Likewise, an offender’s “[g]ood performance while on retained jurisdiction, though commendable, does not alone establish an abuse of discretion in the district judge's decision not to grant probation.” Hurst, 151 Idaho at 438, 258 P.3d at 958 (citing State v. Statton, 136 Idaho 135, 137, 30 P.3d 290, 292 (2001)).

At the jurisdictional review hearing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for relinquishing jurisdiction. (11/5/14 Tr., p.86, L.11 – p.91, L.1.) The state submits that Simmons has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the jurisdictional review hearing transcript, which the state adopts as its argument on appeal. (Appendix C.)

Finally, Simmons asserts that the district court abused its discretion by denying his Rule 35 motion for a reduction of sentence, in light of his conduct while incarcerated, his plan to move to Utah, and because he paid off his restitution and “no longer has any reason for which to contact his ex-wife.” (Appellant’s brief, pp.11-14.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Simmons must “show that the sentence is excessive in light of new or

additional information subsequently provided to the district court in support of the Rule 35 motion.” Id. Simmons has failed to satisfy his burden.

In its order denying Simmons’ Rule 35 motion, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for denying the motion. The state submits that Simmons has failed to establish an abuse of discretion, for reasons more fully set forth in the district court’s Memorandum Decision and Order Re: Defendant’s Rule 35 Motion, which the state adopts as its argument on appeal. (Appendix D.)

#### Conclusion

The state respectfully requests this Court to affirm Simmons’ conviction and sentence and the district court’s orders relinquishing jurisdiction and denying Simmons’ Rule 35 motion for a reduction of sentence.

DATED this 10th day of February, 2016.

/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 10th day of February, 2016, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

SALLY J. COOLEY  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_  
/s/ Lori A. Fleming  
LORI A. FLEMING  
Deputy Attorney General

## APPENDIX A



**STATE OF IDAHO VS. QUINN GARNER SIMMONS DOCKET NO: 42796**

1 think he's going to face any serious consequences for his  
2 actions, probably because he never has.  
3 I hope and pray, Your Honor, that you will take  
4 this act of violence seriously.  
5 I'm working on forgiving Quinn myself, but right  
6 now my first priority is to protect my children and my  
7 family. And I know Quinn would have his children be  
8 without their mother and stepfather right now. And that  
9 terrifies me. Thank you for listening.  
10 THE COURT: All right. Thank you.  
11 Additional victim impact statements this  
12 morning, Mr. Ferguson?  
13 MR. FERGUSON: Yes, Your Honor. Mr. Blake  
14 Worthington.  
15 THE COURT: Mr. Worthington.  
16 BLAKE WORTHINGTON: Your Honor, thank you for  
17 your time today.  
18 I wanted to show you this picture real quick.  
19 This is my family. This is here -- this is why I am here  
20 today, that day on August 30th, 2013 -- I'm sorry, I'm  
21 not usually an emotional person.  
22 I just -- I remember my wife went out to try to  
23 resolve a situation with our two youngest daughters who  
24 were supposed to go with Mr. Simmons, and I -- I -- I  
25 worried for her safety. I was scared. And I thought I'd

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1 better go out. So I knew he had some fear of me, and if  
2 I went out there, maybe he would behave himself and  
3 wouldn't be aggressive with her.  
4 And I remember going out the door, and the last  
5 thing I remember is looking at Holly and then waking up  
6 at St. Al's and her kissing my face. I suffered quite a  
7 few injuries. I had a torn MCL of my left knee and a  
8 broken fractured leg. I had scrapes all over my body and  
9 I had a road rash on my chin where his bumper grabbed me  
10 and on my back where he continued to drag me. And he  
11 dragged me until he hit the pillar of the home. That  
12 pillar saved my life. I look at that pillar every day  
13 and almost want to kiss it because I know if that pillar  
14 hadn't been there, I'd be dead. He pressed my skull  
15 against the foundation.  
16 And these two little girls right here were  
17 looking out the window on the door. If he hadn't hit the  
18 pillar, he would have possibly killed them as well. And  
19 he doesn't care.  
20 When I read the psych eval I heard about today  
21 and he said he got the short end of the stick in the  
22 legal process, I was stunned and amazed. For six years  
23 we've asked -- we've had him drive on our yard and do all  
24 types of crazy things and called the police time and time  
25 again, and nothing has ever happened.

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1 It's to the point I've given up hope. I thought  
2 this man is just here to bully us for the rest of our  
3 lives and our assets. And I was fearful for this day  
4 that happened. I knew one day he would get to this point  
5 where he would do something this crazy.  
6 But when I read that psych eval and he said "I  
7 got the short end of the stick in the legal system and  
8 I'm still angry," I thought where is the remorse? I  
9 mean, he tried to kill my wife and I and leave these  
10 kids, my kids without parents.  
11 I don't understand someone who thinks that way,  
12 Your Honor. I don't. I do understand that I fear for my  
13 kids' life. I fear for my wife's life. I know that I'm  
14 angry that my kids, I fear for them to stand in the  
15 entryway of my home in one of the nicest neighborhoods in  
16 Boise, because I fear that he could drive his car through  
17 my house.  
18 And people say, Well, it's a one-time deal. He  
19 threatened my mother-in-law over here with the same thing  
20 many years before.  
21 I would ask, I would beg you, Your Honor, I'm  
22 coming to you and I'm asking and I'm begging, we need  
23 your help today. My family needs your help. We need --  
24 I'm scared. I'm scared for my family and for our safety.  
25 I've been scared for ten months now.

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1 And I ask you and I beg you, please send him a  
2 message so that he understands that this isn't okay.  
3 Because if it's too light, he'll just assume with a wink  
4 and a nod that what he did was okay.  
5 I appreciate this opportunity to speak to you  
6 today and again I hope and I ask you for your help.  
7 Thank you, Your Honor.  
8 THE COURT: All right, sir. Thank you.  
9 Any further victim impact statements this  
10 morning, Mr. Ferguson?  
11 MR. FERGUSON: No, Your Honor.  
12 THE COURT: Other evidence or testimony then  
13 from the State?  
14 MR. FERGUSON: No, sir.  
15 THE COURT: Evidence or testimony from Collins?  
16 MR. COLLINS: Just argument from the defense,  
17 Judge.  
18 THE COURT: All right. Thank you.  
19 Mr. Ferguson.  
20 MR. FERGUSON: Thank you.  
21 Your Honor, on August 30th, 2013, the defendant  
22 went to his ex-wife's residence. And when he arrived at  
23 Holly and Blake's home, he just sat in his car. He had  
24 had some text message communication with Holly. And as  
25 she came out to talk to him, he just ignored her. He sat

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1 in his car and ignored her.  
2 She began walking back up to the porch when  
3 Blake exited the house and while standing on the porch  
4 asked her what was going on.

5 The defendant backed away from the car -- the  
6 curb, rather, aimed his car at Holly and Blake's house  
7 and accelerated. He drove over the curb, over the  
8 sidewalk, the front lawn, the hedges and struck Blake  
9 with his car. The only thing that stopped him, as Blake  
10 mentioned, is the pillar for their front porch.

11 He then backed away out of the -- off the lawn,  
12 back out onto the street narrowly missing Holly who had  
13 to jump into the bushes to avoid him.

14 Afterwards when law enforcement arrived, the  
15 defendant claimed that Blake challenged him by saying,  
16 "You want some of this; come get it." So he told Officer  
17 Erikson, "I hit Blake."

18 The children and the victims all give a very  
19 consistent version of the facts to law enforcement. Many  
20 of the people who witnessed this incident didn't think  
21 the defendant was going to do anything but drive on the  
22 yard, leave a mark and be rude. So the warning signs  
23 that they saw didn't surprise them.

24 As they characterized in their victim impact  
25 statements that were submitted with the presentence

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1 investigation, it was Quinn being Quinn. And that's what  
2 made this incident dangerous. The victims thought the  
3 defendant was trying to bully them, when he was actually  
4 intentionally trying to hurt them.

5 When the Court looks at the presentence  
6 investigation, there's a very stark contrast between the  
7 defendant talking about himself and the victims talking  
8 about the defendant. The victims recant a long history  
9 of abuse, bullying, harassment and emotional turmoil.  
10 These sentiments are echoed by the children and extended  
11 relations.

12 The defendant, on the other hand, takes a  
13 victim's stance. In one of the presentence investigation  
14 addendums, the defendant's former counselor states, "The  
15 defendant is a very rigid thinker and he would justify in  
16 his head that retribution is okay and it's the only  
17 logical response."

18 The presentence investigator opined that "The  
19 defendant is one of those people who has simply flown  
20 under the radar."

21 Your Honor, the defendant struck Blake  
22 Worthington with his car intentionally, he fractured his  
23 leg, injured his knee, caused lacerations to his head and  
24 gave him a concussion. He now suffers from memory  
25 problems which may or may not resolve. The physical

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1 scars may heal but the emotional scars will last far  
2 longer.

3 Your Honor, the State believes that the  
4 presentence investigator's conclusion that the defendant  
5 has flown under the radar is accurate. He's been able to  
6 talk his way out of every incident Holly or anyone else  
7 has suffered at his hands.

8 So based on the facts in this case, the  
9 presentence investigation and the investigator's  
10 recommendation that the defendant is not appropriate for  
11 community supervision, the State believes that the  
12 defendant poses a significant risk to the public and,  
13 specifically, to the victims in this case; thus, the  
14 State asks for the following sentence: We ask for a  
15 total term of 15 years with five years fixed and ten  
16 years indeterminate.

17 The State is not asking for a fine. We're not  
18 asking for the \$5,000 penalty as provided by statute. We  
19 do have a significant amount of restitution.

20 My understanding is that Mr. Collins may not be  
21 in a position to agree with the restitution at this time,  
22 but we do have a proposed order. The restitution is for  
23 the amount of \$28,957.39.

24 We'd ask the Court to grant a no contact order  
25 for Blake and Holly Worthington and also prohibit the

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1 defendant from visiting their residence as well. And I  
2 do have a proposed amended no contact order as well.

3 Because of the level of violence in this case  
4 and because of the potential for ongoing violence with  
5 the defendant, the State asks that you impose that  
6 sentence.

7 The State doesn't ask that lightly, but the  
8 State believes that the defendant needs to be held  
9 accountable and this is the only way that the victims  
10 will be able to have some closure and feel safe and also  
11 hold the defendant accountable for his actions.

12 Thank you.

13 THE COURT: Mr. Ferguson, thank you.

14 Mr. Collins.

15 MR. COLLINS: Thank you, Judge. You know it's  
16 clear that the events of August 30th, although they  
17 happened in an instant, they were years and years in the  
18 making. And that's obvious from when you review the PSI  
19 materials and when you hear the victim impact statements  
20 here today.

21 Quinn and Holly met, fell in love, got married.  
22 When they were married in 1994, they both were very  
23 young. He was 24. She was 21. Over the years, the  
24 couple ended up having four children together.

25 Over time things became strained. Quinn felt as

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## APPENDIX B

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1 a lot. I wouldn't ask for it if I didn't think it made  
2 sense in this case.  
3 And again the presentence investigator said such  
4 a thing happened in the only other case with someone who  
5 matches his criteria, so that's what I'm asking for, why  
6 I'm asking for it; ask that the Court enter its judgment  
7 in that respect today.  
8 Thank you, Judge.  
9 THE COURT: Mr. Collins, thank you.  
10 Mr. Simmons, before I pronounce a sentence in  
11 your case, you have the right to make any statement that  
12 you would like. Is there some statement you would like  
13 to make, sir?  
14 THE DEFENDANT: Yes, I would, Your Honor.  
15 I would like to take this opportunity, when I  
16 address the Court, to express how sorry I am for the pain  
17 that I know that I've caused to Blake and to his family  
18 as well as to my family and my friends and how this has  
19 affected -- it has rippled through so many people's lives  
20 and I am sorry for it.  
21 I know my actions were childish and dangerous  
22 and reckless. And if I could take them back, I would do  
23 it; if I would have taken just a minute longer to think  
24 about it, done something different at that moment. I  
25 don't know what I could -- I wish I had done something  
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1 different.  
2 And I know that my actions have dire  
3 consequences, not only for me but for the victims and  
4 their family and others.  
5 And I just -- I pray that you'd give me an  
6 opportunity to demonstrate my remorse and to be a part of  
7 society. So I ask that you would consider what my  
8 attorney's asked for and that I am sincerely sorry for  
9 what's happened.  
10 THE COURT: All right, sir. Thank you.  
11 Mr. Collins, are you aware of any reason why the  
12 Court cannot proceed to sentencing?  
13 MR. COLLINS: I am not, Your Honor.  
14 THE COURT: Mr. Simmons, on your guilty plea to  
15 this felony aggravated battery charge, sir, I find you  
16 are guilty.  
17 This is a difficult case for sentencing. These  
18 are very serious facts. You caused serious injuries to  
19 Mr. Worthington. You have exacerbated a very difficult  
20 situation with your ex-wife and your children. And they  
21 continue to struggle with the aftermath from this event.  
22 Some of the continuing struggles are physical,  
23 and the difficulties that Mr. Worthington continues to  
24 have in expressing his thoughts and being different than  
25 he was before you visited this violence on him and your  
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1 ex-wife.  
2 Other than these difficulties are just the  
3 mental anguish that they continue to try to live with day  
4 in and day out that they continue to struggle with.  
5 I have two different depictions of you,  
6 Mr. Simmons. I've read the description of you by your  
7 ex-wife and each of your children. And it is not  
8 flattering at all, Mr. Simmons.  
9 They know you well. They know you in your  
10 private moments. And they say terrible things about you.  
11 And this is over their entire lifetime of knowing you.  
12 You have really made a terrible impression on your own  
13 children. You have caused great, great difficulty in  
14 their relationships. They don't like you much. They  
15 make it really, really clear.  
16 And I can tell your wife -- your ex-wife still  
17 struggles with those same sorts of characterizations of  
18 you.  
19 And, yet, I have all of these letters from other  
20 people who know you well, from your family members, who  
21 have taken the time to write me and from people that know  
22 you from work and otherwise.  
23 And then I get a whole different picture of you.  
24 They think that you are a person of value. They say  
25 you're kind, you're smart, you're generous, you're  
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1 helpful, you're a contributor in the community, and they  
2 have respect for you. They think that -- they're  
3 probably stunned that you're here, that you could have  
4 done something like this. And these really are opposite  
5 pictures.  
6 I, frankly, was surprised at the evaluation by  
7 Dr. Arnold that places you on the low level of future  
8 risk to reoffend in some violent way; not just because of  
9 what you did in this case, but because of what your  
10 children tell me about you and about how afraid they are  
11 of you. And somehow there's a disconnect here. And it's  
12 hard for me to -- it's hard for me to be comforted, as I  
13 would normally be, with an evaluation of an expert that  
14 tells me you are a low risk when I'm reading these other  
15 depictions of you that do not present you as a low risk.  
16 They present you as a powder cake that has a  
17 very low flash point for erupting and erupting in mean  
18 and terrible ways, which is certainly the impression that  
19 Mr. Worthington has and he shared. So I have this  
20 dichotomy and this mixed picture which makes this  
21 difficult.  
22 In addition, I recognize that you have never had  
23 any criminal law violations for all the times that the  
24 police have become entangled in your domestic situation.  
25 You have not been convicted of any criminal offense. And  
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1 I treat you as a person without any criminal record for  
2 purposes of this sentencing.  
3 I recognize that you have taken responsibility  
4 for this. But I told you when I took your plea, even  
5 though this was an Alford plea, I told you I was going to  
6 treat you the same as I would any guilty person,  
7 Mr. Simmons.  
8 You know, frankly, this is one of these cases  
9 where your ex-wife and Mr. Worthington probably wouldn't  
10 be satisfied if I sent you to prison for 15 years, such  
11 is their anger and the level of their frustration with  
12 you.  
13 I have reviewed those factors that guide my  
14 decision when I have the situation where the State is  
15 asking for a sentence of imprisonment and your attorney  
16 is asking for a suspended or probated sentence. Those  
17 factors are set forth in Idaho Code Section 19-2521.  
18 I've reviewed those things with care.  
19 The first factor is whether there is an undue  
20 risk that during a period of suspended sentence or  
21 probation you will commit another crime.  
22 I have indications that there isn't any risk or  
23 that you're at a low risk of that, yet I have the  
24 descriptions from your family, and I conclude in your  
25 family situation with your children, your ex-wife and her

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1 husband there is some risk of an eruption of some sort in  
2 the future.  
3 The next factor is whether you're in need of  
4 correctional treatment that can be provided most  
5 effectively by an institution.  
6 I find that that's not a factor that leans one  
7 way or another given the mental health evaluation, given  
8 the anger evaluation.  
9 The next factor is whether a lesser sentence  
10 would depreciate the seriousness of your crime.  
11 And in this case, this factor militates strongly  
12 in favor of a sentence of imprisonment, Mr. Simmons. I  
13 am concerned that in your case if I sentence you to a  
14 lesser sentence, that that will depreciate your conduct  
15 and the seriousness of what you've done.  
16 The next factor is whether imprisonment will  
17 provide an appropriate deterrent to you.  
18 It will. You'll be sentenced to punishment.  
19 That will have some deterrent effect, sir.  
20 The next factor is whether imprisonment will  
21 provide an appropriate deterrent to others.  
22 I would hope that a sentence in any case would  
23 deter others from committing a violent crime such as  
24 this.  
25 And the last factor is whether you are a

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1 multiple offender or professional criminal, and you are  
2 not.  
3 So here it's a mixed bag for you, Mr. Simmons.  
4 On balance, having considered these factors, I  
5 determine that a sentence of probation is not appropriate  
6 and I'm not going to order it in the case.  
7 This will be the judgment, this will be the  
8 order of the Court: I will impose a ten-year sentence  
9 consisting of three years fixed followed by seven years  
10 indeterminate.  
11 As an exercise in discretion, I will retain  
12 jurisdiction. I will ask the department of corrections  
13 to put you in a traditional rider program. I will  
14 specifically recommend that they put you in a program for  
15 conflict resolution.  
16 I am retaining jurisdiction in this case for  
17 evaluation purposes only, Mr. Simmons. I want to be  
18 clear. I make no promise to you, sir, that I will place  
19 you on probation once you complete programming through  
20 the department of corrections. Even with a  
21 recommendation that I place you on probation from the  
22 department, I'm making no promise of that sort at all.  
23 I want to have the department of corrections  
24 more carefully evaluate you for risk of future violence,  
25 especially risk of future violence in this dysfunctional

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1 family setting that you have.  
2 Now, I don't have the authority to order the  
3 department to put you in one program as another. They  
4 will make that decision after you go through the  
5 receiving and diagnostics unit.  
6 But I will order you to pay all of those court  
7 costs and statutory assessments that are authorized by  
8 law. Those will be reflected in written detail in the  
9 judgment. I'm not going to order a fine at this point,  
10 which is a significant potential for restitution in the  
11 case, which I think ought to be addressed as a priority  
12 in the ultimate resolution. I will defer any  
13 consideration of restitution until the rider review. I  
14 don't want your rider interrupted for a restitution  
15 hearing.  
16 I will order that you provide a DNA sample and a  
17 right thumb print impression to the Idaho State Police.  
18 That will be done through the department of corrections.  
19 I will give you credit for the five days that  
20 you served before you posted bond in this case.  
21 The no contact order that was entered in this  
22 case expires on its face on September 3rd, 2014. I will  
23 enter this no contact order that's been provided. I will  
24 order that you have no contact with either  
25 Mr. Worthington or your ex-wife, and that this no contact

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## APPENDIX C

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1 worth and my personal power doesn't come from others, it  
2 comes from within me; and that he was well within his  
3 rights to tell me don't come on my grass. And I  
4 shouldn't have been offended or I should have just  
5 accepted he was well within his rights. He's not taking  
6 anything away from me. And I acted out.

7 And that's where, you know, I think I've  
8 changed. I've been able to, say, humble myself, really;  
9 to understand what others -- that I don't control anyone  
10 else. All I can control is within this shirt. That's  
11 it. And most of what I control is what's in my head, and  
12 that's what drives my actions.

13 And I can't -- I can't explain to you how sorry  
14 I am for what's happened and the injuries that I've  
15 caused not only to Blake but also to, you know, my kids  
16 and Holly and to my extended family and to her extended  
17 family.

18 When I started writing the consequences, I  
19 noticed that the consequences that I'd write down were "I  
20 did this" or "I felt bad" or "I had to do this or that."  
21 And as I got going and I realized that there were other  
22 people involved with these consequences, other people had  
23 to, you know, experience consequences because of my  
24 actions as well.

25 And that's -- it has been an incredible learning

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1 experience for me. And I believe that they have given me  
2 tools and to rethink things. And I just want the chance  
3 to be able to use this new -- these new tools that I got,  
4 these new thinking patterns to not only improve my life  
5 but to help those around me, just to practice them in  
6 society. And I'm just asking for that chance.

7 THE COURT: All right, Mr. Simmons. Thank you.  
8 Mr. Collins, are you aware of any reason why the  
9 Court cannot proceed to disposition?

10 MR. COLLINS: I am not, Judge.

11 THE COURT: This was a difficult case for  
12 sentencing, and it's no less so today, Mr. Simmons.

13 One of the reasons that I did not send you to  
14 prison immediately on this offense -- certainly I would  
15 have been justified in doing so simply because of the  
16 seriousness of your criminal conduct, the injuries that  
17 you caused and the lasting impacts you have visited upon  
18 your ex-wife and her husband -- is that I wanted to see  
19 whether some further evaluations by the department of  
20 correction would give me some better insight into what  
21 makes you tick and what risk you would pose to your  
22 family if I was to put you in the community.

23 And certainly I didn't feel comfortable with the  
24 notion of putting you in the community in June at the  
25 time of your sentencing. And I guess my hope, sir, was

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1 that I would, through the evaluation process at the  
2 department of corrections, try to develop some better  
3 insight into what risk you represent.

4 And at the time of the sentence, the reason I  
5 was particularly concerned is that in the retelling of  
6 this event to the presentence investigator, you described  
7 this as an accident. You didn't describe this in the way  
8 that it was perceived by your victims.

9 Even today they describe this as attempted  
10 murder by you in your anger and in your desire and  
11 inability to prevent yourself from lashing out at people  
12 that you were very, very angry with at that time.

13 You told the presentence investigator that you  
14 decided to do the one thing they didn't want you to do,  
15 and that was to drive on their grass, and you had a sense  
16 of urgency to get on their grass so they could see you  
17 being defiant, show them who's who, I guess.

18 "And in that haste, I threw the shift lever all  
19 the way down and revving the engine, almost hitting the  
20 car in front of me by mistake. I was able to put the car  
21 in reverse and back up about 5 feet because I had parked  
22 directly behind another car. I pushed the gas and turned  
23 onto their lawn with a sense of urgency. I simply got  
24 going too fast.

25 "To my horror, the car didn't even seem to slow

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1 down and I slammed on the brakes. I started screaming  
2 because I couldn't stop. The car skidded across their  
3 bushes leaving skid marks on their sidewalk.

4 "Holly was able to move out of the way but  
5 Blake, who had been facing me, watching the whole time,  
6 didn't move until too late. He took a couple of steps  
7 while turning towards the porch. I can only speculate  
8 that he didn't perceive any danger until it was too late.  
9 And even then he must have thought the car wasn't moving  
10 fast enough to do anything."

11 What you did is you used your vehicle to  
12 intentionally, significantly injure another human being  
13 in your anger. And that is not addressed in this  
14 retelling of the incident to the presentence  
15 investigator.

16 In my judgment, the retelling of this incident  
17 is calculated to put you in a false-positive light. And  
18 that's the part that made the sentencing difficult,  
19 Mr. Simmons.

20 You know, I have a lot of cases where I can say  
21 to a defendant that you don't have any significant  
22 criminal history. You don't have any criminal history.  
23 You have no misdemeanors. You have no felonies. You  
24 were -- at the time of sentencing, you were 44 years of  
25 age. At 44 years of age, this is the first time you

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**KASEY REDLICH, CERTIFIED COURT REPORTER**



**STATE OF IDAHO VS. QUINN GARNER SIMMONS DOCKET NO: 42796**

1 appeared in front of a court of consequences for your  
2 behavior.

3 And I wasn't sure what -- quite what to make of  
4 you. I didn't take any comfort at all in your words.  
5 And, frankly, the retelling of this incident by the other  
6 witnesses is scary.

7 And so it was with that in mind that I retained  
8 jurisdiction, hopeful that the department could, through  
9 its evaluation process, give me some better insight.

10 And it is my judgment at the end of the day,  
11 Mr. Simmons, that I don't have any better insight today  
12 than I did at the time of sentencing.

13 It is not with any degree of satisfaction or  
14 pleasure, Mr. Simmons, that I must tell you I don't trust  
15 you in the community. I don't see the growth or the  
16 insight through the period of retain jurisdiction that  
17 would make me feel more comfortable today in placing you  
18 in the community than I felt on June 25th.

19 I recognize that you did get a positive  
20 recommendation from the department of corrections. And,  
21 sir, I don't ignore recommendations from the department  
22 of corrections lightly.

23 In your case, I take this very seriously. Your  
24 victims, whatever your personal feelings about them, I  
25 will tell you that they are sincere in their abject fear

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1 that you are going to act out on them if you are released  
2 in the community. And from my review of the materials,  
3 they have a basis in fact for that concern.

4 Because I don't have any better sense of this  
5 than when I sentenced you, I'm not comfortable placing  
6 you in the community.

7 Moreover, sir, I don't think that the time that  
8 you have served as a result of these charges, which is  
9 approximately 140 days -- we've got it calculated. I  
10 don't think that is a sufficient calculus for an  
11 appropriate punishment for what you did and the damage  
12 that you caused and the change in the outlook that you  
13 have caused to your victims and your family. And I find  
14 some basis in this record for them to have legitimate  
15 fears of you, Mr. Simmons.

16 None of this is easy, Mr. Simmons. But at the  
17 end of the day, it's simply the case that I don't have  
18 any faith that you can be accountable in the community  
19 for your behavior. I haven't gotten any better insight  
20 from how you presented yourself at sentencing to trust  
21 you in the community.

22 And for that reason, sir, as an exercise in  
23 discretion and having again considered those factors set  
24 forth in Idaho Code Section 19-2521, I decline to suspend  
25 the balance of this sentence and place you in the

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1 community.

2 I will, in fact, impose the balance of this  
3 sentence and remand you to the department of correction  
4 in execution of this full sentence.

5 I do advise you, Mr. Simmons, that you have the  
6 right to appeal this decision declining to grant you  
7 probation.

8 You have 42 days from written entry of this  
9 judgment to file an appeal, in which you are entitled to  
10 be represented by an attorney. If you cannot afford an  
11 attorney, sir, one will be appointed at State expense.

12 If you are a needy person, the costs of that  
13 appeal will be paid for by the State.

14 At this point, sir, I do remand you to the  
15 custody of the sheriff for redelivery to the department  
16 of corrections in execution of your service.

17 Mr. Ferguson, if you cannot resolve restitution  
18 within 60 days, I will direct you to notice it for  
19 hearing.

20 MR. FERGUSON: Yes, sir.

21 THE COURT: That's the judgment. That's the  
22 order of the Court.

23 That's all I have for you, sir.

24 MR. COLLINS: Judge, the PSI materials.

25 THE COURT: Mr. Collins, thank you.

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2 (End of proceedings.)  
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**KASEY REDLICH, CERTIFIED COURT REPORTER**



## APPENDIX D

NO. \_\_\_\_\_  
A.M. 9:00 P.M. FILED

MAY 12 2015

CHRISTOPHER D. RICH, Clerk  
By INGA JOHNSON  
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF  
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,

Plaintiff,

vs.

QUINN GARNER SIMMONS,

Defendant.

Case No. CR-FE-2013-0012168

MEMORANDUM DECISION  
AND ORDER RE: DEFENDANT'S  
RULE 35 MOTION

The matter before the Court is Defendant Quinn Garner Simmons' ("Simmons") Motion for Reduction of Sentence. As discussed below, the Court will deny the motion.

#### Background

Simmons was charged in an Information filed on November 1, 2013, with Count I: Aggravated Battery, a felony, I.C. §§ 18-903(b), -907(b), -907(a); Count II: Attempted Aggravated Battery, a felony, I.C. §§ 18-306, -903(b), -907(b); Count III: Use of a Deadly Weapon During the Commission of a Crime, an enhancement, I.C. § 19-2520; and Count IV: Disturbing the Peace, a misdemeanor, I.C. § 18-6409. On February 26, 2014, Simmons pleaded guilty to Count I thereto. Simmons, with his attorney, Christian D. Collins, was sentenced on June 25, 2014. The Court imposed a sentence consisting of an aggregate term of ten (10) years, with the first three (3) years of said term to be fixed, and the remaining seven (7) years to be indeterminate. Counts II, III, and IV were dismissed pursuant to the plea agreement by the State. The Court retained jurisdiction for a period not to exceed three hundred sixty-five (365) days and

MEMORANDUM DECISION AND ORDER RE: DEFENDANT'S RULE 35 MOTION – PAGE 1

recommended that Simmons be placed in a Traditional Rider Program for "evaluation" purposes. When the Court makes a rider placement for evaluation, the Court means to make it clear that it has concerns about whether the defendant is suitable for community supervision. The Court recommended programming for conflict resolution, cognitive self-change and moral recognition therapy.

On November 5, 2014, Simmons came before the Court for a rider review hearing. The Court heard victim statements from Holly Worthington ("Holly") and Blake Worthington ("Blake") (collectively "the Worthingtons"), and a statement by the defendant, Simmons. Based upon these statements and upon review of the Presentence Investigation Report, Addendum to the Presentence Investigation Report, and all other documentation, and even with a contrary recommendation from the Department of Correction, the Court relinquished jurisdiction. The Court expressed concerns over trusting Simmons in the community. It appears that the Department of Corrections did not put Simmons in a conflict resolution pathway. In the Court's view, because Simmons had a very low L.S.I. score of 10, the Department of Corrections provided minimum programming. Mr. Simmons did not have a drug or alcohol problem, yet the Department of Corrections placed Simmons in 'A New Directions' which is directed at substance abuse. It is not clear that Simmons received cognitive self-change or moral recognition therapy. The Court did not see the growth or insight through the period of retained jurisdiction to feel comfortable in placing Simmons back in the community.

On March 5, 2015, Simmons filed a timely motion for Reduction of Sentence. In support of this motion, Simmons filed: 1) a transcript of the November 5, 2014 disposition after period of retained jurisdiction hearing; 2) the Declaration of Quinn Simmons; 3) a letter from Douglas Garner; 4) Order of Dismissal and Defendant's motion to Dismiss in CR-MD-2014-6484; and 5)

**MEMORANDUM DECISION AND ORDER RE: DEFENDANT'S RULE 35 MOTION – PAGE 2**

1 the PSI and APSI, previously filed with the Court. On March 18, 2015, the State filed its  
2 objection to the motion. Accordingly, the Court finds that this matter is fully submitted.

### 3 **Standard of Review**

4 A Rule 35 motion to reduce a lawful sentence is essentially a plea for leniency. The  
5 defendant has the burden of proving that the sentence is unreasonable. *State v. Burnight*, 132  
6 Idaho 654, 660, 978 P.2d 214, 220 (1999). The motion is addressed to the sound discretion of  
7 the sentencing court and may be granted if the original sentence was unduly severe or  
8 unreasonable. *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). For  
9 purposes of analyzing a sentence, a court analyzes the entire sentence, both fixed and  
10 indeterminate. *State v. Huffman*, 144 Idaho 201, 202, 159 P.3d 838, 839 (2007); *State v. Oliver*,  
11 144 Idaho 722, 726, 170 P.3d 387, 391 (2007). The court presumes that the fixed portion of the  
12 sentence will be the defendant's probable term of confinement. *Oliver*, 144 Idaho at 726 (citing  
13 *State v. Trevino*, 132 Idaho 888, 980 P.2d 552 (1999)). As a general rule, "a sentence fixed  
14 within the limits prescribed by statute ordinarily will not be considered an abuse of discretion by  
15 the trial court." *State v. Nice*, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982).  
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17 For a sentence to be considered reasonable, at the time of sentencing the court must take  
18 into consideration the objectives of sentencing: whether confinement is necessary to accomplish  
19 the objective of protecting society and to achieve any or all of the related goals of deterrence,  
20 rehabilitation, or retribution applicable to the case. *State v. Toohill*, 103 Idaho 565, 568, 650  
21 P.2d 707, 710 (Ct. App. 1982). This requires a court to focus on the nature of the offense, the  
22 character of the offender, and the protection of the public interest. *State v. Reinke*, 103 Idaho  
23 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982). Finally, where the sentence is not excessive  
24 when pronounced, the defendant must show that it is excessive in view of new or additional  
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26 **MEMORANDUM DECISION AND ORDER RE: DEFENDANT'S RULE 35 MOTION – PAGE 3**

1 evidence presented with the motion for reduction. *State v. Hernandez*, 121 Idaho 114, 117, 822  
2 P.2d 1011, 1014 (Ct. App. 1991).

### 3 Discussion

4 The maximum penalty for Count I: Aggravated Battery, a felony, is fifteen (15) years in  
5 prison. Idaho Code § 18-908. The sentence imposed is within the statutory bounds. Simmons'  
6 motion is essentially a plea for leniency and reconsideration. Simmons argues that his time of  
7 incarceration has been sufficient punishment and requests the Court to place Simmons on  
8 probation, or, in the alternative, another Rider.

9 At the rider review hearing, the Worthingtons expressed concerns regarding Simmons'  
10 close living proximity to the Worthingtons if released in the community. Simmons asserts that  
11 these fears have been addressed because his home has been sold and he plans to move over three  
12 hundred (300) miles from the Worthingtons. Simmons maintains that the only reason he made  
13 contact with the Worthingtons in the past was to visit his children. Simmons now assures the  
14 Court that he will not attempt to visit his children, or the Worthingtons, if released.

15 Simmons asserts that he is not a danger to the community because he completed his rider  
16 program with positive reviews, he has had no disciplinary problems while incarcerated and he is  
17 a low risk of re-offending. Simmons also maintains that he has no criminal history, no mental  
18 illness and no substance abuse history.

19 At the time the Court imposed Simmons' sentence, it considered all relevant and required  
20 sentencing factors, *see Toohill*, 103 Idaho at 565; *Reinke*, 103 Idaho at 771, and imposed a  
21 reasonable and appropriate sentence for Simmons' crimes. The Court does not find that  
22 Simmons' sentence is excessive. The Court's duty requires it to consider various factors at  
23 sentencing including protecting the public safety and deterrence. Simmons was found guilty of a  
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26 **MEMORANDUM DECISION AND ORDER RE: DEFENDANT'S RULE 35 MOTION – PAGE 4**

1 very serious crime which has had significant and continuing repercussions on the lives of his  
2 victims, and his children who witnessed the crime.

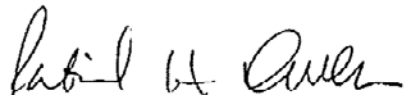
3 The Court recognizes that Simmons did well enough in the rider programming, and the  
4 Court encourages Simmons' positive steps while incarcerated. However, the Court remains  
5 convinced that the imposed sentence was appropriate. Accordingly, the Court will decline the  
6 invitation to reduce the sentence.

7 **Conclusion**

8 As discussed above, the Court will deny the Simmons' Rule 35 Motion for  
9 Reconsideration.

10 IT IS SO ORDERED.

11 Dated this 11 day of May, 2015.

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14 Patrick H. Owen  
15 District Judge  
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